ORIGINAL

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate Future	)	RM-8117, RM-8030
Development of SMR Systems in the	)	RM-8029
800 MHz Frequency Band	)	
	)	
and	)	
	)	
Implementation of Section 309(j) of the	)	PP Docket No. 93-253
Communications Act - Competitive	)	
Bidding	)	
800 MHz SMR	)	

To: The Commission

REPLY COMMENTS

Supreme Radio Communications, Inc. (Supreme), by its attorneys, respectfully submits these comments in reply to comments filed in the above-captioned matter. In support of its position, Supreme shows the following:

The Ruse of Regulatory Parity

Nextel's comments are a long cry for regulatory parity for all systems which communicate with mobile units on the go. Taken as a whole, this is exactly what Nextel is proposing. This proposal is based on a misreading of the newest changes in the Communications Act which do not require regulatory parity, but rather, comparable technical requirements among substantially similar common carrier services. Nothing contained within the legislation suggests the sweeping changes in the SMR industry

advocated by the Nextel comments. Indeed, those other areas of the Communications Act which deal with the Commission's acting in the public interest run fully contrary to Nextel's proposals. In fact, Nextel also seems to have forgotten those sections of the Act which direct the Commission toward the competitive effect of its regulation. Nextel's comments are an attempt to get the Commission to focus on a single portion of the Act and to interpret that single portion in a manner most favorable to Nextel. Unfortunately, such an interpretation would wreak havoc on the SMR industry.

Assuming that the Commission intends to decide the instant matter in a way that reflects all of the Act and not just the one line pointed to by Nextel, then Nextel's proposals and the proposals contained within the Further Notice of Proposed Rule Making must be rejected. Adoption of the proposals would not produce comparable technical requirements. Adoption would produce favorable benefits for Nextel which extend far beyond mere technical considerations.

For example, the Commission is enjoying a lively bidding process in its auction of A and B Block PCS. The reason for the lively bidding is that all auction competitors stand in an equal position with each other. The same would not exist if auctions were applied to SMR operations. Those auctions would provide a distinct advantage for Nextel such that the Commission could reasonably expect that only Nextel would bid in many instances. Certainly, reality and history have removed any parity which Nextel claims adoption of the proposals would offer.

Nextel likes to point to the forced relocation of microwave users as the justification for relocating analog SMR operators. This is not a parallel situation. In PCS, the Commission identified other, suitable spectrum to accommodate the affected licensees. No such identification of suitable spectrum has occurred to accommodate analog SMR operators and subscribers. Nor will the Commission find parity in the notion that what Nextel seeks is the removal or destruction of its competitors. PCS operators were not seeking an advantage over competitors. Adoption of the frequency swapping proposal is not equal to the PCS activity, in either cost, efficiencies or effect. In fact, adoption would be blatantly anticompetitive, a claim which would have been difficult to support regarding the PCS-related activity.

Nextel's comments suggest that the Commission's past adoption of market-based licensing methods demands a similar consideration for SMR operations. Once again, Nextel's demand for parity is entirely flawed. Earlier market-based plans included the allocation and licensing of unused spectrum which might accommodate without adverse impact the arbitrary use of imaginary boundaries. Such is not the case here. By applying the MTA boundaries to a fully mature licensing system, Nextel is demanding that an organized system of licensed facilities, serving millions of end users, shift and reconfigure itself to fit into the new system. No such request was made or granted on behalf of earlier, market-based systems. Again, Nextel is not requesting parity, but rather a singular preference.

It is apparent, therefore, that Nextel's cries for parity are specious. It does not seek parity through its comments. It seeks advantage over competitors, heaped atop its earlier advantages granted by its earlier waiver request.

True Parity

If what Nextel had been seeking all along was parity, and not dominance, why did it choose the path it is on? Nextel created its ESMR service by use of a waiver. Nextel could have sought, instead, a rule making to create and accommodate a wholly new service. That new service, free from the anticompetitive effects that it has had on the SMR marketplace, could have defined itself in a manner which would have established a logical and legal basis for regulatory and operational and technical parity with cellular or PCS. However, Nextel did not choose this route. It chose to attempt to thrive on planted ground.

Now Nextel is before the Commission asking for a parity with cellular and PCS which would, in effect, ignore the adverse impact on the other members of the same industry, SMR. Taking little or no responsibility for its own, possibly poor, choices, it seeks protection from the very competition which it chose to accept when it requested its waiver. The Commission's past efforts to promote parity have been toward the view that competition is beneficial to the marketplace. Therefore, Nextel's efforts to eliminate or curtail its most prevalent and legally identifiable competition, analog SMR service, cuts

against its request for parity. The ends of parity would not be served by adoption of Nextel's proposals that created the Further Notice of Proposed Rule Making.

If what Nextel truly seeks is parity, then the Commission should accommodate Nextel. It should remove the grants of waiver as contrary to equitable regulation of the SMR industry. It should allow for wide-area systems based on standards of loading, construction and interference protection for existing systems. The Commission should, in effect, provide parity for those entities who most need it, analog SMR operators. By adopting true parity and rejecting the ersatz forms of it proposed in this rule making, the Commission will breathe real vitality into the SMR industry -- the kind of vitality that provides telecommunications service to the public rather than ticks on a Wall Street monitor.

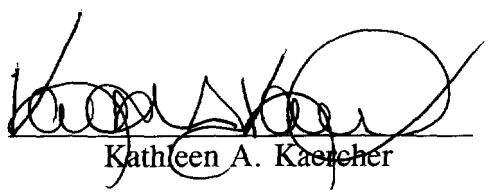
Then Nextel, like all other SMR operators, can choose to employ digital technology, if the market wants it. Nextel can design a frequency reuse technology. It can offer service over wide areas or local areas or nationwide, without demanding that all other competitors steps aside and let it through. That is the history of parity in the regulation of telecommunications and the Commission and the American public have been well served by it. In the meantime, if what Nextel seeks is an advantage in the marketplace, its billions of dollars in resources should be advantage enough without further favoritism. Pity that access to all those resources still has not managed to result

in a single, viable ESMR system, that provides a service that the public has demonstrated it wants and will pay for.

Conclusion

For all the foregoing reasons, Supreme Radio Communications, Inc. respectfully requests that the Commission reject the proposals lofted in its Further Notice of Proposed Rule Making in the above-captioned matter.

Respectfully submitted,
SUPREME RADIO COMMUNICATIONS, INC.

By 
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Dated: March 1, 1995

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I hereby certify that on this first day of March, 1995, I served a copy of the foregoing Reply Comments on the following by placing a copy in the United States Mail, first class postage prepaid:

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